

**Statement of
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Before the

**Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
United States Senate**

June 12, 2003

Concerning

**H.R. 622 Coconino/Tonto Land Exchange
H.R. 762 Reasonable Right-of-Way Fees Act of 2003
S. 434 Idaho Panhandle Forest Improvement Act of 2003
S. 435 Sandpoint Land and Facilities Conveyance Act of 2003
S. 490 Washoe Tribe Land Conveyance**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I am Tom Thompson, Deputy Chief National Forest System. I am here today to provide the Department's comments on five bills. The Department supports S. 434 and H.R. 622. The Department does not oppose H.R. 762 with changes. The Department has concerns with S. 490 and would like to work with the Committee to address these concerns. Lastly, the Administration is still developing a position on S. 435.

H.R. 622—Tonto and Coconino National Forests Land Exchange Act

H.R. 622 directs the Secretary to exchange approximately 108 acres of National Forest System land within the Tonto National Forest, northeast of Payson, Arizona and currently occupied by 45 residential cabins under special use permits, for 495 acres of non-federal land (known as the Q Ranch) within the Tonto National Forest, east of Young, Arizona. This exchange is identified in the bill as the Diamond Point/Q Ranch Land Exchange.

The bill also directs the Secretary to exchange approximately 222 acres of National Forest System land within the Tonto National Forest adjacent to the Town of Payson near the municipal airport for roughly 157 acres of private land (owned by Montezuma Castle Land Exchange Joint Venture) adjacent to the Montezuma Castle National Monument and nearly 108 acres of private land known as Double Cabin Park Lands. Both of the private parcels are within the Coconino National Forest boundary.

H.R. 622 requires that the values of the non-Federal and Federal land to be exchanged be equal or equalized, as determined by the Secretary through an appraisal by a qualified appraiser and performed in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and Federal Land Policy and Management Act of 1976.

The bill requires the Secretary to execute the Montezuma Castle and Diamond Point land exchanges within 6 months after receipt of an offer from the private landowners, unless the Secretary and the private landowners mutually agree to extend such deadline.

The Department supports the concept of exchanging the National Forest System lands, which were identified in H.R. 622; however, we would like to work with the Committee regarding the priorities for deleting Federal properties from the exchange to ensure that a manageable land ownership pattern remains.

H.R. 762—Reasonable Right-of-Way Fees Act of 2003

H.R. 762 provides for the continued predictability and interagency consistency and efficiency in determining rental fees for linear rights-of-way uses authorized by the Forest Service and Bureau of Land Management on Federal lands which they administer. It would apply to rights-of-way authorizations for linear facilities including oil and gas pipelines, electric transmission lines, telephone and fiber-optic communications lines, water lines, and roads.

The Mineral Leasing Act of 1920, as amended, and the Federal Land Policy and Management Act of 1976, as amended, direct that the holder of a permit or right-of-way pay the market value of the right-of-way use to the United States, as determined by the appropriate Secretary who grants or issues such a right-of-way. The Secretary's discretion to determine the manner in which the market value is established has often been the subject of dispute and contention.

In an April 11, 2002, hearing before the House Resource Subcommittee on National Parks, Recreation and Public Lands on a previous version of this bill, Pete Culp, Assistant Director for the Bureau of Land Management, testified that the Department of the Interior was committed to ensuring that right-of-way rental fees for the use of federal lands managed by the BLM are appropriate and fair, and that the rates for such rental fees were predictable and certain. He further testified that the current land based fee rates for linear rights-of-way facilities can continue to be an appropriate basis for the derivation of right-of-way rental fee, with periodic adjustments for inflation.

H.R. 762 as presently written would give the Secretaries only one year after the date of its enactment to make such changes through administrative procedures needed to revise regulations and agency policies. Based on our experience with such procedures, we would recommend providing at least 2 years following the date of enactment of the bill for the respective Secretaries to complete those regulatory and policy changes. .

The Department of Justice has also advised us of its concern with the characterization of the fee schedule as "fair market rental value" in the heading of Section 2 and "Fair Market Value" in the new paragraph (k) and recommends that these descriptions be changed. "Fair market value" and "rental value" are terms of art within both the appraisal profession and case law and the bill should not confuse the terms. Any market value determination of value requires an analysis of what is happening in the marketplace as opposed to the establishment of a fee schedule as provided for by H.R. 762.

While H.R. 762 is generally consistent with our agencies' current plans to update our linear fee schedules, it would constrain future agency options in a way that may be undesirable. For example, there may be limited cases where a site-specific evaluation may be more appropriate than the use of a fee schedule. However, we recognize that passage of H.R. 762 would provide greater stability and reduce the amount of uncertainty felt by permit holders, while generally providing a reasonable rental fee for these linear uses of federal land. Therefore, with adoption of the earlier recommendations, we would not oppose enactment of the bill.

S. 434—Idaho Panhandle Forest Improvement Act of 2003

S. 434 authorizes the Secretary of Agriculture to sell or exchange all or parts of certain tracts of National Forest System land in the State of Idaho and to use the proceeds for the acquisition of land and construction of a new Ranger District office in the Silver Valley portion of the Idaho Panhandle National Forest (IPNF). To the extent there are excess proceeds after construction of the Ranger District Office, the bill allows the proceeds to be used to acquire land, construct, or rehabilitate other facilities in the IPNF.

The Department supports S. 434 because the tracts identified for sale or exchange are no longer needed for Forest Service administrative purposes and conveyance of these tracts will reduce the long term cost of administering the related special use permits. Additionally, the construction of a new Ranger District office in the Silver Valley would enhance public service and improve public safety.

As S. 434 illustrates, the Department has a number of facilities and appurtenant administrative land excess to agency needs. The FY 2004 Budget contains a proposal for the establishment of a Facilities Acquisition and Enhancement Fund that would enable the Secretary to sell such units excess to the agency's need and to utilize proceeds from those sales for the acquisition or development of land and improvements for administrative purposes. Funds collected under this authority would address backlogs and administrative consolidations while improving efficiencies through the reconstruction of functionally obsolete facilities or construction of new facilities. To this end, the Department will submit proposed legislation concerning this Fund in the upcoming weeks.

S. 435—Sandpoint Land and Facilities Conveyance Act of 2003

S. 435 directs the Administrator of General Services Administration to transfer to the Secretary of Agriculture, without reimbursement, administrative jurisdiction over the Sandpoint Federal Building and 3.17 acres of land in Sandpoint, Idaho. The bill requires the Secretary to assume the obligation of the Administrator to repay to the Federal Finance Bank the debt incurred with respect to the property.

S. 435 authorizes the Secretary to sell or exchange all right, title, and interest of the United States in and to the property for market value. An exchange consideration may, if elected by the Secretary, include the construction of administrative facilities for the National Forest System in Bonner County, Idaho. The bill requires the entity acquiring the property to honor any outstanding indebtedness on the property to the Federal Finance Bank.

Further, the Secretary can use proceeds from the sale of the property only for: (1) the acquisition, construction, or improvement of administrative facilities and associated land; and (2) the acquisition of land and interests in land for addition to National Forest System in the Northern Region of the Forest Service in Idaho.

The Forest Service has leased the General Services Administration Sandpoint Federal Building for almost 30 years. The building is too large for the combined federal presence and steps should be taken to address this problem. The Administration is still developing a position on this bill.

S. 490—Washoe Tribe Land Conveyance

S. 490 directs the Secretary of Agriculture to convey 24.3 acres of National Forest System land within the Lake Tahoe Basin Management Unit to the Secretary of the Interior to be held in trust for the Washoe Indian Tribe of Nevada and California. The conveyance would be subject to a reservation of a non-exclusive easement on a forest road to continue public and administrative access to other adjacent National Forest System land. In addition, the bill would grant vehicular access over a forest road to the parcel by tribal members under certain circumstances. The transfer would occur without consideration. The Department believes the bill would defeat public expectations of continued access to this lakefront parcel. The Department has concerns with S. 490 and would like to work with the Committee on alternatives that would meet tribal needs as discussed in our testimony.

The Department understands and appreciates the goals of the Washoe Tribe to acquire land in the Lake Tahoe Basin for the purpose of exercising recurring exclusive use of Lake Tahoe shoreline property for traditional and customary cultural purposes. The Forest Service has taken extensive actions to meet the needs of the Tribe within the limits of its authority. At present, the Washoe Tribe holds a special use permit with the Forest Service for the uses described in Section 1(b)(2). These uses have been analyzed and approved through the Forest Service special use permitting process and appear to meet the needs of the Tribe.

The 24.3-acre parcel identified in S. 490 for transfer to the Department of the Interior was originally acquired by the Forest Service as part of a larger purchase using funds authorized by the Land and Water Conservation Fund Act to provide public access to recreational resources in the Lake Tahoe Basin. Transfer of this parcel to the Department of the Interior to be held in trust for exclusive use by the Washoe Tribe is not consistent with the public purposes for which this land was purchased. The Lake Tahoe Basin Management Unit has placed a high priority on the acquisition and retention of lakefront property for public access and watershed protection. Any land conveyance should be with consideration to ensure the public obtains market value. The Department also has concerns with the reversionary interests identified in 1(e)(2).

In lieu of transferring the parcel to the Secretary of the Interior, the Department recommends the bill be amended to authorize the Secretary of Agriculture, upon the Tribe's request, to close the parcel to general public use on a temporary basis to protect the privacy of the traditional and customary cultural uses of the land by the Tribe. We note that Congress has provided similar statutory authority to the Secretary of the Interior in section 705(a) of the California Desert Protection Act (16 U.S.C. 410aaa-75(a)) and section 507(c) of Public Law 100-225 (16 U.S.C. 460uu-47(c)), and to the Secretary of Agriculture in section 2(d)(1) of Public Law 103-014 (16 U.S.C. 460jjj-1(d)(1)), an act establishing the Jemez National Recreation Area. Additionally, to meet the Tribe's goal of using the parcel for cultural horticulture and ethnobotany purposes, a provision could be added to the bill to authorize the Secretary of Agriculture to issue a permit to the Washoe Tribe for these uses. The Department believes this approach would accommodate both the goals of the Washoe Tribe and the objective of maintaining public access to the parcel.

This concludes my statement. I would be happy to answer your questions.